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ARIZONA SUPERIOR COURT
PIMA COUNTY

10 Richard Rodgers, et al.,

11 Plaintiffs,

12 vs.

13 Charles H. Huckelberry, et al.,

14 Defendants.

Case No. C20161761

ANSWER

(The Honorable Catherine Woods)

15 In answer to Plaintiffs' Complaint, Defendants respond and allege as set forth
16 below. Each numbered paragraph responds to the allegations in the similarly numbered
17 paragraph in the Complaint.

18 1. Pima County (the "County") denies that it has agreed to gift or loan any funds to
19 a private entity. The County admits that it has agreed to design and construct a light-
20 manufacturing facility (the "Facility") and lease-sell it to World View Enterprises
21 ("World View"). The Facility will be adjacent to a public launch pad (the "Launch Pad"),
22 which the County is building and which World View has agreed to operate and maintain
23 on behalf of the County. To the best of Defendants' information and belief, World
24 View's business plan includes commercial and scientific uses for its high-altitude balloon
25 technology in addition to near-space "tourism," though Defendants admit that is a
26 component.

1 2. Defendants lack sufficient information to form a belief as to the truth of the
2 allegations in paragraph 2.

3 3. The County admits that, to pay for construction of the Facility, the County issued
4 Certificates of Participation, Taxable Series 2016B, in the principal amount of
5 \$15,185,000 (the “2016B COPs”). The 2016B COPs constitute new obligations; they are
6 not being used to redeem other outstanding obligations, nor alter in any way the
7 repayment terms of any outstanding obligations, and are therefore not a “refinancing” in
8 the normal sense. The 2016B COPs do, however, utilize a County lease-purchase
9 financing structure that was already in place and has been periodically utilized by the
10 County for the issuance of additional COPs. The issuance of new COPs under this
11 structure does constitute a *restructuring* of the obligations under the lease-purchase
12 agreement (the “COPs Lease”) between the County and U.S. Bank National Association,
13 as trustee (the “COPs Trustee”), which is part of the financing structure (*see also* ¶ 21
14 below). If that restructuring is what Plaintiffs mean by referring to a “refinancing,” that is
15 correct. The COPs holders are entitled to a share of the stream of rent payments the
16 County makes on the facilities that are subject to the COPs Lease. The COPs Trustee
17 either holds fee title or a leasehold interest in each of those facilities. Those facilities do
18 not include the Facility being constructed by the County and leased to World View.

19 4. Defendants admit that the transaction with World View was entered into by the
20 County in order to induce World View to keep its business operations, and the associated
21 public economic benefits, in Pima County.

22 5. Defendants admit, based on information provided by World View, that World
23 View was one of six winners of the Arizona Commerce Authority’s (“ACA’s”) Spring
24 2014 Arizona Innovation Challenge, and that World View signed a grant agreement with
25 ACA, with an effective date of August 29, 2014. Under the grant agreement, World View
26 received \$250,000 to assist it with a 12-month project: taking certain steps to

1 commercialize its high-altitude-balloon technology. The ACA grant agreement requires
2 World View to return the \$250,000 grant award if it relocates its principle place of
3 business outside of Arizona before September 1, 2017. Beyond that requirement,
4 Defendants deny that the agreement imposes any requirement on World View to keep its
5 operations in Arizona; and it imposes no obligation to locate those operations in Pima
6 County.

7 6. Defendants admit that the County awarded a contract for architectural services to
8 Swaim Associates, Ltd. (“Architectural Contract”) (copy attached to this Answer as
9 Exhibit A) and a contract for construction-manager-at-risk services to Barker-Morrissey
10 Contracting, Inc. (“CMAR Contract”) (copy attached to this Answer as Exhibit B). The
11 companies were selected because of their familiarity with the project. Defendants further
12 admit that the Pima County Board of Supervisors (“Board”) made a finding that entering
13 into the Architectural Contract and CMAR Contract immediately was necessary to
14 complete the Facility by November 2016, which was a material inducement for World
15 View to stay in Pima County and was therefore necessary to obtain the desired economic
16 benefits for residents of Pima County. The Board also found under A.R.S. § 34-606 that
17 compliance with A.R.S. Title 34 was impracticable. Defendants deny that the County
18 “bypassed competitive bidding requirements,” because no statutory competitive bidding
19 requirements were applicable to the Architectural Contract or CMAR Contract. Instead,
20 as to the Architectural Contract and CMAR Contract, Chapter 6 of Title 34 contains a
21 *qualifications*-based (not price-based) procurement of professional architectural services
22 and construction-manager-at-risk services. A.R.S. § 34-603.

23 As to the agreements with World View, A.R.S. § 11-254.04 authorizes the
24 County to engage in “any activity that the board of supervisors has found and determined
25 will assist in the creation or retention of jobs or will otherwise improve or enhance the
26 economic welfare of the inhabitants of the county,” including specifically the

1 “acquisition, improvement, leasing or conveyance of real or personal property.” The
2 statute contains no competitive bidding requirements. The County entered into the Lease-
3 Purchase Agreement (the “Facility Lease”) and the Launch Pad Operating Agreement
4 (the “Operating Agreement”) with World View under this authority. The Facility Lease
5 and the Operating Agreement are attached to this Answer as Exhibits C and D,
6 respectively.

7 7. Defendants lack sufficient information to form a belief as to the truth of the
8 allegations in paragraph 7.

9 8. Defendants lack sufficient information to form a belief as to the truth of the
10 allegations in paragraph 8.

11 9. Defendants lack sufficient information to form a belief as to the truth of the
12 allegations in paragraph 9.

13 10. Defendants admit that, if paragraphs 7 through 9 are accurate, Plaintiffs are
14 taxpayers. Defendants deny that Pima County is making any payment to World View, or
15 any unlawful expenditures of any kind. Additionally, with respect to the Architectural
16 Contract or CMAR Contract, Plaintiffs lack taxpayer standing to challenge those awards.
17 See ¶¶ 89-90, below.

18 11. Defendants admit that Mr. Huckelberry is the Pima County Administrator and
19 that he negotiates some proposed contracts on behalf of the County. Defendants deny that
20 Mr. Huckelberry has authority to approve or sign, and deny that he did sign, the contracts
21 at issue in this case. Mr. Huckelberry is not authorized to contractually bind the County
22 unless expressly delegated contracting authority by the Board. *Gorman v. Pima County*,
23 230 Ariz. 506, 509, ¶ 14 (App. 2012) (finding that the Pima County Board of Supervisors
24 has not delegated general contracting authority to Mr. Huckelberry).

25 12. Defendants admit that the named individuals are the members of the Board and
26 that the Board as a whole approved the Architectural Contract, CMAR Contract, Facility

1 Lease, and Operating Agreement. Defendants deny that any member of the Board
2 executed the Architectural Contract or CMAR Contract; the Board awarded the contracts
3 and authorized the Procurement Director to execute them for the County. Sharon
4 Bronson, as Chair of the Board, signed the Facility Lease and Operating Agreement for
5 the County.

6 13. Defendants admit the allegation in paragraph 13.

7 14. Defendants admit the allegation in paragraph 14.

8 15. Defendants admit the allegation in paragraph 15.

9 16. Defendants admit the allegation in paragraph 16.

10 17. Defendants admit that the Board approved Resolution 2016-5 at its February 16,
11 2016 meeting, and that the resolution authorized the issuance of Certificates of
12 Participation (COPs). The COPs that were ultimately issued consisted of (1) the Series
13 2016B COPs (approximately \$15,000,000 of taxable COPs used to fund construction of
14 the Facility; *see* ¶ 3 above), and (2) the Series 2016A COPs (approximately \$30,000,000
15 of tax-exempt COPs, approximately \$10,000,000 of which were issued to redeem some
16 existing 2007 COPs in order to get a lower interest rate, and the remainder of which were
17 issued to fund wastewater improvements). The Final Official Statement for both the
18 2016A and 2016B COPs can be viewed online:

19 [http://www.onlinemunis.com/public/Tracking.asp?pid=3049&eid=225874&eindex=1&fl](http://www.onlinemunis.com/public/Tracking.asp?pid=3049&eid=225874&eindex=1&flag=track)
20 [ag=track](http://www.onlinemunis.com/public/Tracking.asp?pid=3049&eid=225874&eindex=1&flag=track)

21 Defendants further admit that whenever Pima County issues additional COPs
22 under the existing financing structure it constitutes a *restructuring* of the COPs Lease
23 between the County and the COPs Trustee, which *might* be what Plaintiffs are calling a
24 “refinancing” (*see* ¶ 3 above). Normally, however, only the approximately \$10,000,000
25 of 2016A COPs issued to redeem (pay off) outstanding 2007 COPs would be accurately
26 characterized to as a “*refinancing* of existing debt.” That refinancing was completely

1 unrelated to the 2016B COPs that were issued to fund construction of the Facility.

2 18. Defendants admit that the allegation in paragraph 18 is essentially correct,
3 subject to the caveat regarding the characterization of all the 2016 COPs as a
4 “refinancing,” as explained in ¶¶ 3 and 17 above.

5 19. Defendants admit, as explained in ¶ 17 above, that approximately \$20,000,000 of
6 the 2016A COPs were issued to fund wastewater improvements. However, the final
7 maturity on the 2016A COPs is 2021 (the same as the 2007 COPs that were redeemed
8 with the remainder of the 2016A COPs proceeds).

9 20. Defendants admit that the allegations in paragraph 20 are essentially correct. The
10 Launch Pad will, however, be operated by World View, on Pima County’s behalf, as a
11 limited-purpose public facility and will therefore not be controlled entirely at World
12 View’s discretion, or used exclusively by World View.

13 21. Defendants deny the first sentence in paragraph 21 of the Complaint. U.S. Bank
14 National Association, as Trustee under a Trust Agreement between the bank and the
15 County, dated June 1, 2008, as subsequently amended, holds title to or a leasehold
16 interest in the facilities subject to the COPs Lease. That Trust Agreement is *not* a
17 “Depository Trust Agreement.” Defendants admit the allegations in the remainder of
18 paragraph 21.

19 22. Defendants admit the allegation in paragraph 22 of the Complaint, but point out
20 that the County currently has \$164,170,000 of outstanding COPs under the Trust
21 Agreement. The 2016B COPs therefore account for less than 10% of that debt. The total
22 principal and interest payments due on this debt for FY 2018 is \$38,828,461, while the
23 payment on the 2016B COPs for that year is \$1,324,679, or just 3.4% of the total
24 payment amount. Any additional risk created by the issuance of the 2016B COPs is thus
25 miniscule. As of the filing of this Answer, the County also has approximately
26 \$341,300,000 in outstanding general-obligation bonds, \$99,020,000 in outstanding

1 HURF-revenue bonds, and \$551,289,347 in outstanding sewer-revenue obligations. The
2 \$15,000,000 of 2016B COPs is approximately 1.3% of this overall debt.

3 23. Defendants admit the allegations in paragraph 23 of the Complaint.

4 24. Defendants admit the allegations in paragraph 24 of the Complaint, but deny the
5 characterization of the Facility and Launch Pad as “World View’s.” The County will own
6 the Facility and Launch Pad. World View is leasing the Facility, with an option to
7 purchase, and is operating the Launch Pad on behalf of the County.

8 25. Defendants admit the allegations in paragraph 25 of the Complaint.

9 26. Defendants admit the allegations in paragraph 26 of the Complaint.

10 27. Defendants admit the allegations in paragraph 27 of the Complaint.

11 28. Defendants admit the allegations in paragraph 28 of the Complaint.

12 29. Defendants admit the allegations in paragraph 29 of the Complaint.

13 30. Defendants admit that the stated annual rental rates are accurate, but deny that
14 they are substantially below market rates.

15 31. Defendants admit the allegation in paragraph 31 of the Complaint.

16 32. Defendants admit the allegations in paragraph 32 of the Complaint.

17 33. Defendants admit the allegations in paragraph 33 of the Complaint.

18 34. Defendants admit the allegation in paragraph 34 of the Complaint is essentially
19 correct, but point out that, as set forth in the Complaint’s next paragraph, the County can
20 terminate the Facility Lease if employment targets are missed by more than 10%, even if
21 this is due to circumstances beyond World View’s control.

22 35. Defendants admit that paragraph 35 of the Complaint is an accurate summary of
23 Section 4.2.5 of the Facility Lease concerning World View’s employment-level
24 obligations, but note that the County can terminate the Facility Lease for any other
25 material default that is not timely cured, as provided in Section 11 of the Facility Lease.

26 36. Defendants admit the allegation in paragraph 36 of the Complaint.

1 37. Defendants admit the allegations in paragraph 37 of the Complaint.

2 38. Defendants deny the allegation in paragraph 38 of the Complaint.

3 39. Defendants deny that a default by World View puts the County's "loan
4 collateral" at risk, as alleged in paragraph 39 of the Complaint. The loan collateral owned
5 or leased by the COPs Trustee (which is *not* the "Depository Trustee" as alleged by
6 Plaintiffs) is only at risk if the County defaults on its payments to the COPs Trustee under
7 the COPs Lease. The loss of the rental income under the Facility Lease would not cause
8 the County to default on its COPs Lease payments to the COPs Trustee. The two
9 transactions are entirely separate. *See* ¶ 22 above.

10 Defendants admit that, if World View were to default because of a good-faith
11 failure to meet its employment requirements, the County would not be able to "recoup its
12 expenditures" for the construction of the Facility from World View. But since it would
13 still own the Facility itself (plus all rent previously paid by World View), there is no
14 "loss" to recoup. In addition, if World View defaults in any way other than a good-faith
15 failure to meet the employment requirements, World View will be liable for direct
16 contract damages, which would include all sums due from World View under the Facility
17 Lease, subject only to a duty of the County to take reasonable steps to mitigate those
18 damages.

19 40. Defendants admit the allegation in paragraph 40 of the Complaint.

20 41. Defendants admit the allegation in paragraph 41 of the Complaint.

21 42. Defendants deny that the allegation in paragraph 42 of the Complaint is an
22 accurate characterization of the Operating Agreement, which states that any requirements
23 imposed on other users by World View must be commercially reasonable.

24 43. Defendants admit the allegation in paragraph 43, subject to the caveat in ¶ 42,
25 above.

26 44. Defendants admit the allegation in paragraph 44.

1 45. Defendants admit the allegation in paragraph 45, but note that fees charged other
2 users must be based on a “reasonable apportionment” of World View’s cost of operating
3 the launch pad, which means that World View will not recoup the operating costs
4 apportioned to its own usage.

5 46. Defendants admit the allegation in paragraph 46.

6 47. Defendants deny that Mr. Huckelberry’s January 19, 2016, memo to the Board
7 (the “January 19 Memo”) states that he personally conducted all negotiations with World
8 View on behalf of Pima County. A copy of the January 19 Memo is attached to this
9 Answer as Exhibit E.

10 48. Defendants admit the allegation in paragraph 48, but point out that “competitive
11 bidding” is neither required nor permitted for the Architectural Contract or CMAR
12 Contract; that A.R.S. § 34-606 is not limited to traditional “emergencies;” and that Pima
13 County Code § 11.12.060 is not applicable to construction contracts. Pima Cty. Code §
14 11.16.010(A) (“Conditions for use. Procurement for construction shall be conducted in
15 accordance with Arizona Revised Statutes Title 34.”).

16 49. There is no factual allegation in paragraph 49.

17 50. Defendants admit the allegation in paragraph 50.

18 51. Defendants deny that the County has “made a loan in the aid of a private
19 corporation,” or otherwise violated the Gift Clause. The Gift Clause requires that a
20 public contract with a private entity (1) serve a public purpose, and (2) require the
21 government entity receive not-grossly-disproportionate consideration in exchange for
22 what it is agreeing to do. *Turken v. Gordon*, 223 Ariz. 342, 346 and 348, ¶¶ 11 and 22
23 (2010). The Board made a specific finding, as stated in Section 1.8 of the Facility Lease,
24 that the transaction with World View would “have a significant positive impact on the
25 economic welfare of Pima County’s inhabitants.” It made that finding based on a study
26 by Applied Economics, commissioned by Sun Corridor, Inc., which projects significant

1 direct and indirect economic impacts from World View's operation. Such indirect public
2 benefits are, under *Turken*, sufficient to show public purpose. *Id.*, at 349-350, ¶¶ 25-28.
3 In fact, the Arizona Supreme Court has already determined "that the issuance of bonds
4 for industrial development in general [is] consistent with the Gift Clause." *Turken* 223
5 Ariz. at 349, ¶ 27 (citing to its earlier decisions in *Indus. Dev. Auth. of Pinal County v.*
6 *Nelson*, 109 Ariz. 368, 374 (1973) and *Humphrey v. City of Phoenix*, 55 Ariz. 374, 387
7 (1940)). As for consideration, the Court in *Turken* made it clear that a transaction fails
8 this part of the Gift Clause test only if the consideration provided by the private party is
9 "so inequitable and unreasonable that it amounts to an abuse of discretion." *Id.* at 349, ¶
10 30. That occurs only when the public entity pays "*far more* than the fair market value"
11 for what the private entity is doing or providing in exchange. *Id.* at 350, ¶ 35 (emphasis
12 added). In this case, the Facility Lease requires World View to pay the County substantial
13 rent over its 20-year term, which exceeds the County's cost of building the Facility, plus
14 the value of the land.

15 52. The statement in paragraph 52 is a legal conclusion. Defendants deny the
16 validity of the statement, as well as the characterization of the challenged transaction.

17 53. The statement in paragraph 53 is a legal conclusion. Defendants deny the
18 validity of the statement, as well as the characterization of the challenged transaction.

19 54. The statement in paragraph 54 is a legal conclusion. Defendants deny the
20 validity of the statement, as well as the characterization of the challenged transaction.

21 55. The statement in paragraph 55 is a legal conclusion. Defendants deny the
22 validity of the statement, as well as the characterization of the challenged transaction.

23 56. Defendants deny that the County has loaned its credit but otherwise admit the
24 allegation in paragraph 56.

25 57. Defendants deny the allegation in paragraph 57.

26 58. Defendants admit that, as an incorporeal legal entity, Pima County cannot be

1 employed by World View. To the extent this allegation is intended to suggest that the
2 County will not receive a benefit from jobs created in satisfaction of the Employment
3 Targets, Defendants deny that allegation.

4 59. Defendants deny the allegation in paragraph 59. Payment of wages in Pima
5 County results directly in additional income taxes for the State. Because a substantial
6 portion of those wages will be spent locally, it also results in increased excise taxes for
7 both the State and local governments.

8 60. Defendants admit the allegation in paragraph 60, but point out that anyone
9 employed in Pima County will inevitably pay some taxes in Pima County.

10 61. The statement in paragraph 61 is a legal conclusion, with which Defendants
11 disagree. World View is contractually obligated to employ a stated number of people at
12 stated wage levels, and the Facility Lease and Operating Agreement are subject to
13 termination for failure to meet those obligations. The promises are not illusory.

14 62. Defendants do not know what other financial arrangements World View might
15 be undertaking in connection with the expansion of its business in Pima County, or
16 whether those arrangements involve putting its own assets at risk. Defendants deny that
17 World View pays nothing for the use of the Launch Pad, and deny that World View can
18 make a profit from operating the Launch Pad. World View must pay all costs associated
19 with maintaining and operating the Launch Pad, must make it available for use by others,
20 and can only charge fees that recoup the portion of operating expenses fairly allocable to
21 third-party use. World View may, of course, make a profit from its own activities that
22 involve using the Launch Pad, as may any other commercial user of the Launch Pad.

23 63. Defendants deny the allegation in paragraph 63. World View is obligated, under
24 the Facility Lease, to pay the County an amount that exceeds the County's cost of
25 building the Facility. This is not grossly disproportionate.

26 64. Defendants admit that Plaintiffs, if the allegations in the beginning paragraphs of

1 the Complaint are true, pay taxes, but deny everything else. No public funds have been
2 misspent.

3 65. The statement in paragraph 65 is a legal conclusion that Defendants assert is
4 incorrect.

5 66. There is no new factual allegation in paragraph 66.

6 67. The statement in paragraph 67 is a statement of law.

7 68. Defendants admit only that the language quoted is in A.R.S. § 11-256, but deny
8 that the statute applies to all leases of County property.

9 69. Defendants admit that what Plaintiffs refer to as the “Headquarters” is land and a
10 building owned by Pima County, but deny that the Facility Lease is subject to A.R.S. §
11 11-256. The Board approved the Facility Lease and Launch Pad operating agreement
12 under the authority, granted to it by A.R.S. § 11-254.04, to engage in “any activity that
13 the board of supervisors has found and determined will assist in the creation or retention
14 of jobs or will otherwise improve or enhance the economic welfare of the inhabitants of
15 the county,” including specifically the “acquisition, improvement, leasing or conveyance
16 of real or personal property.” This specific authority makes compliance with A.R.S. § 11-
17 256 unnecessary. *See Johnson v. Mohave County*, 206 Ariz. 330, 333, ¶ 11 (App. 2003)
18 (concluding that “the public auction requirement of § 11–256(C) is inapplicable to
19 acquisitions or leases for public park purposes made pursuant to § 11–932”).

20 70. Defendants admit that the factual statement in paragraph 70 is correct, but deny
21 that § 11–256(B) is applicable to the Facility Lease.

22 71. Defendants admit that the factual statement in paragraph 71 is correct, but deny
23 that § 11–256(E) is applicable to the Facility Lease.

24 72. Defendants admit that the factual statement in paragraph 72 is correct, but deny
25 that § 11–256(E) is applicable to the Facility Lease.

26 73. Defendants admit that the factual statement in paragraph 73 is correct, but deny

1 that § 11–256(B) is applicable to the Facility Lease.

2 74. Defendants admit that the factual statement in paragraph 74 is correct, but deny
3 that § 11–256(B) is applicable to the Facility Lease.

4 75. Defendants admit that the factual statement in paragraph 75 is correct, but deny
5 that § 11–256(C) is applicable to the Facility Lease.

6 76. Defendants admit that the factual statement in paragraph 76 is correct, but deny
7 that § 11–256(C) is applicable to the Facility Lease.

8 77. Defendants admit that the factual statement in paragraph 77 is correct, but deny
9 that § 11–256(D) is applicable to the Facility Lease.

10 78. Defendants admit that the factual statement in paragraph 78 is correct, but deny
11 that § 11–256(D) is applicable to the Facility Lease.

12 79. The statement in paragraph 79 is a legal conclusion that Defendants assert is
13 incorrect.

14 80. Defendants admit that Plaintiffs pay taxes, but deny that any public funds were
15 misspent.

16 81. The statement in paragraph 81 is a legal conclusion that Defendants assert is
17 incorrect.

18 82. Paragraph 82 contains no new factual allegations.

19 83. Defendants admit that the cited statutes provide for a competitive process for
20 selection of construction-managers-at-risk and design professionals, but deny that they
21 involve any “bidding” or price-based considerations.

22 84. Defendants admit that Plaintiffs have accurately quoted a portion of § 34-606.

23 85. Defendants admit that the Board awarded the Architectural Contract and Design
24 Contract at the *recommendation* of Mr. Huckelberry, and based on the information in the
25 January 19 Memo. Defendants deny, however, that this recommendation was a
26 “predetermined selection,” since Mr. Huckelberry has no authority to approve and

1 execute contracts on behalf of the County. *Gorman v. Pima County*, 230 Ariz. 506, 509, ¶
2 14 (App. 2012).

3 86. Defendants deny the allegations in paragraph 86.

4 87. Mr. Huckelberry and the Board concluded that, because of World View's
5 financial commitments, World View would not locate its expanded operations within
6 Pima County if the County could not commit to completing the Facility by November
7 2016. The Board concluded that this made compliance with the usual competitive
8 processes impracticable and not in the public interest (*see* Section 1.3 of the Facility
9 Lease, and p. 7-8 of the January 19 Memo). Defendants admit that timely completion of
10 the Facility and the Launch Pad is not necessary to prevent a threat to public health or
11 safety but affirmatively allege that compliance with Title 34 would have been
12 impracticable.

13 88. Defendants deny that the use of an accelerated selection process under § 34-606
14 was a ruse. The County's motivation was to induce World View to locate its operations in
15 Pima County, for the economic benefit of the residents of the County, and the Defendants
16 were informed and believed that the accelerated construction schedule was necessary to
17 do that.

18 89. Defendants deny the allegation in paragraph 89 that the award of the
19 Architectural Contract or CMAR Contract violated applicable law. Defendants also
20 specifically deny that Plaintiffs, as taxpayers, can show a "detriment." The statutes cited
21 by Plaintiffs provide for qualifications-based procurement of the services that are the
22 subject of the Architectural Contract or CMAR Contract. Cost is not considered.
23 Plaintiffs have not alleged any facts indicating that, had the normal qualifications-based
24 competitive process been followed, the cost to taxpayers would have been lower.

25 90. Defendants deny that Plaintiffs are entitled to the relief requested. Even if the
26

1 County violated Title 34, injunctive relief is not available.¹ *See Achen-Gardner, Inc. v.*
2 *Superior Court In & For County of Maricopa*, 173 Ariz. 48, 55 (1992) (in response to a
3 motion for reconsideration, the Court stated that it was an open question as to whether an
4 injunction was an available remedy for the Title 34 violation found in that case); A.R.S. §
5 34-613(B) (making injunctive relief available only for a “threatened or pending
6 violation”). The only penalty for a violation of § 34-603 procurement requirements is a
7 statutory penalty of \$5,000, which is available only for a knowing and intentional
8 violation, and only upon an action by the Attorney General. § 34-614(A). If there was any
9 violation here, it was not “knowing and intentional,” and the Attorney General has not
10 sought a penalty.

11 91. Paragraph 91 contains no new factual allegations.

12 92. Defendants admit the allegation in paragraph 92. Section 11.16.010(A) of the
13 County Code provides that “Procurement for construction shall be conducted in
14 accordance with Arizona Revised Statutes Title 34.”

15 93. Defendants admit that Plaintiffs have accurately quoted language from §
16 11.12.060(A), which is the general “emergency procurement” section of the County
17 Code. However, because § 11.16.010 directs compliance with Title 34 for construction
18 contracts, the County does not consider § 11.12.060(A) to be applicable to construction
19 contracts.

20 94. Defendants deny the allegation in paragraph 94 for the reasons explained in ¶¶
21 87 to 88 above.

22 95. Defendants deny the allegations in paragraph 95 of the Complaint for the reasons
23

24 ¹ It is also very unclear what Plaintiffs mean by “injunctive relief preventing
25 enforcement” of the contracts. However, in their final “request for relief” Plaintiffs ask
26 for a “permanent injunction enjoining ... performance on any contract adopted pursuant”
to the lease-purchase and operating agreements. Presumably they mean to enjoin
performance of the Architectural Contract and CMAR Contract.

1 explained above.

2 96. Defendants deny the allegations in paragraph 96 of the Complaint for the reasons
3 explained above. Section 11.12.060 was not applicable to the Architectural Contract or
4 CMAR Contract. To the extent applicable, appropriate qualitative considerations were
5 taken into account when awarding those contracts. (See p. 7 of the January 19 Memo.)

6 97. Defendants deny the allegations in paragraph 97, for the reasons explained in ¶
7 89 above.

8 98. Defendants deny the allegations in paragraph 97, for the reasons explained in ¶
9 90 above.

10 DEFENSES

11 Failure to state a claim on which relief can be granted.

12 Failure to join an indispensable party.

13 Defendant Huckelberry is not a proper defendant.

14 Plaintiffs lack standing to bring an action for the alleged procurement violation;
15 the statute only authorizes the attorney general to bring an action. § 34-613(B).

16 Even if Plaintiffs have standing, they are barred by laches; the Architectural
17 Contract and CMAR Contract were approved almost 3 months prior to the filing of this
18 lawsuit and substantial work has been conducted since that time.

19 Plaintiffs also did not follow the County Code's protest process and therefore
20 cannot raise allegations of County Code violations.

21 Plaintiffs have cited no authority for their request for attorney fees.

22 **Therefore**, Defendants request that the Court find in their favor and grant the
23 following relief:

24 A. Dismiss Plaintiffs' Complaint with prejudice and order that they are entitled
25 to no relief;

26 B. Award Defendants their taxable costs under A.R.S. §§ 12-332 and 12-341

1 and attorney fees under A.R.S. § 12-341.01; and

2 C. Grant such other and further relief as the Court may deem just and proper.

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5 RESPECTFULLY SUBMITTED October 28, 2016.

6 BARBARA LAWALL
7 PIMA COUNTY ATTORNEY

8 By: /s/ Regina L. Nassen

9 Regina L. Nassen

10 Andrew L. Flagg

11 Deputy County Attorneys
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CERTIFICATE OF SERVICE

I hereby certify that on October 28, 2016, I electronically transmitted the attached document to the following TurboCourt registrants using the Clerk's Office's TurboCourt System:

Honorable Judge Catherine Woods
Judge of Superior Court
110 W. Congress
Tucson, AZ 85701
Assigned Judge

James Manley, Esq
Veronica Thorson, Esq.
Goldwater Institute
500 E. Coronado Rd.
Phoenix, AZ 85004
Attorneys for Plaintiffs

By: S. Bowman